



Connecticut Sexual Assault Crisis Services, Inc.

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Testimony of Connecticut Sexual Assault Crisis Services

In Support of HB 6641, AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED
and In Support of HB 6664, AN ACT CONCERNING RESTRAINING ORDERS

Anna Doroghazi, Director of Public Policy and Communication
Judiciary Committee Public Hearing, Monday, March 25, 2013

Senator Coleman, Representative Fox, and members of the Judiciary Committee: my name is Anna Doroghazi, and I am the Director of Public Policy and Communication for Connecticut Sexual Assault Crisis Services (CONNSACS). CONNSACS is the coalition of Connecticut's nine community-based sexual assault crisis services programs, which provide sexual assault counseling and victim advocacy to men, women, and children of all ages. During our last fiscal year, advocates throughout the state provided hospital and court accompaniment, support groups, individual counseling, 24/7 hotline support, and post-conviction services to over 7,000 victims and survivors of sexual violence. Based on our experience working with victims/survivors of sexual violence, we respectfully request the Committee's support for HB 6641 (An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired) and HB 6664 (An Act Concerning Restraining Orders).

CONNSACS strongly supports HB 6641, An Act Concerning the Sexual Assault of Persons Whose Ability to Communicate Lack of Consent is Substantially Impaired. Connecticut law criminalizes intercourse or sexual contact with an individual who is "mentally defective"¹ or "physically helpless."² In addition to using language that is offensive to people with disabilities, these terms have proven problematic because of their absolute nature. According to statute, in order for an individual to be considered "mentally defective," such person must have a mental condition that renders him or her "incapable of appraising the nature of such person's conduct." Similarly, statute defines "physically helpless" as being either *unconscious* or physically *unable* to communicate unwillingness to an act.

By addressing only the most severe physical and mental disabilities, Connecticut's sexual assault statutes are insufficient to hold offenders accountable when they sexually assault individuals with severe but not completely incapacitating disabilities. The limits of existing statute were illustrated in *State v. Fournin*, a 2009 Connecticut Appellate Court decision and subsequent 2012 Connecticut Supreme Court decision that overturned verdict of a man who had been found guilty of sexually assaulting a woman with severe disabilities. The defendant, Fournin, was initially convicted of attempted sexual assault in the second degree and sexual assault in the fourth degree in January of 2008. Both charges stemmed from sexual contact with an individual who, according to the Court, has "significant disabilities...including cerebral palsy, mental retardation, and hydrocephalus. She cannot walk and needs assistance in performing the activities of daily living."

¹ Conn. Gen. Stat. § 53a-71(a)(2)

² Conn. Gen. Stat. § 53a-71(a)(3)

Despite the victim's disabilities, the Appellate court was "not persuaded that the complainant was either unconscious or so uncommunicative that she was physically incapable of manifesting to the defendant her lack of consent." Specifically, the Appellate Court found that because the victim "could communicate using various nonverbal methods, including screeching, biting, kicking, and scratching," "no reasonable jury could have concluded that she was physically helpless."

The Appellate Court's decision was appealed to the Connecticut Supreme Court, which upheld the ruling. The state Supreme Court concluded that "the term 'physically helpless' has a particular statutory meaning that requires more than a showing that a victim is totally physically incapacitated."

The *Fourtin* decision exposed statutory inadequacies that must be remedied. People with disabilities face the highest rates of sexual victimization of any population in our country, and our laws must offer them reasonable protection. Research estimates that up to 83% of women and 32% of men with developmental disabilities will experience some kind of sexual abuse during their lifetime.³ In many cases, people with disabilities are abused by loved ones or care providers: 32% of those who abuse people with intellectual disabilities are family members or acquaintances, and in 44% of cases, the abuser has a relationship with the victim specifically related to the person's disability (residential care staff, transportation providers, personal care assistants, etc.).⁴

It can be extremely difficult for victims of sexual violence to report abuse that is perpetrated by people they know and trust. For survivors with disabilities whose daily care may be dependent on an abuser, it takes an incredible amount of courage to report an assault. When victims come forward and seek justice, they deserve the protection of laws that do not treat their disability as a liability and that adequately hold their offenders accountable.

At the same time, it is not the case that having a disability renders an individual incapable of consent in all circumstances. HB 6641 is the result of thoughtful conversations between CONNSACS, disability advocacy organizations, and the Division of Criminal Justice. We believe that this legislation addresses the statutory gaps illustrated in *Fourtin* and similar cases without restricting anyone's ability to engage in consensual sexual intercourse or sexual contact, and we respectfully request the Committee's support.

CONNSACS also supports HB 6664, An Act Concerning Restraining Orders. This bill would allow victims of sexual violence and stalking who are not family or household members of the offender to apply for a civil restraining order. Connecticut law currently allows survivors of these crimes to obtain civil restraining orders, but only if the perpetrators are spouses, former spouses, parents/children, persons eighteen years of age or older who are related by blood or marriage, persons sixteen years of age or older who are residing together or have resided together, persons who have a child in common, and persons who are in or have recently been in a dating relationship.

While approximately 42% of sexual assault survivors and two-thirds of stalking victims are

³ Johnson and Sigler, "Forced Sexual Intercourse Among Intimates." *Journal of Interpersonal Violence*. 15.1 (2000).

⁴ Baladerian, N. "Sexual Abuse of People with Developmental Disabilities." *Sexuality and Disability*. 9.4 (1991): 232-335.

assaulted by someone who falls under this statutory definition of “family or household member,”⁵ other survivors are assaulted by a friend, acquaintance, school/work colleague, or a stranger and are therefore ineligible for a civil restraining order in Connecticut. Sexual assault crisis counselors have found that some ineligible victims are so fearful of their offender immediately after an assault that they consider lying about their relationship to the offender in order to secure a temporary restraining order. Survivors of sexual violence should not be placed in a position where their fear of an offender outweighs their fear of committing perjury. We believe that HB 6664 will provide survivors with an appropriate way to seek relief from the court regardless of their relationship to their perpetrator.

HB 6664 will also bring Connecticut’s civil restraining orders for sexual assault and stalking victims in line with the criminal protective orders available to such victims. All victims of sexual violence and stalking, regardless of their relationship to the perpetrator, are able to apply for criminal protective orders. Survivors are able to apply for these orders upon the arrest of their offender, but, unfortunately, sexual assault and stalking have low arrest rates for perpetrators. Data from the federal Uniform Crime Report indicates that only 26% of reported forcible rapes result in arrests,⁶ and federal crime victimization surveys place the arrest rate for stalking at about 8%.⁷

There is precedent for civil orders in other states. 33 states offer civil restraining/protective orders to non-family/household victims of harassment or stalking, and at least 17 offer such orders to victims of sexual violence. The American Bar Association provides excellent (though somewhat dated) breakdowns of which states offer civil protective orders for sexual assault and stalking/harassment:

- Sexual Assault (2009):
<http://www.vaw.umn.edu/documents/sexualassaultcpobystate/sexualassaultcpobystate.pdf>
- Stalking/harassment (2007):
<http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/StalkingHarassmentCPOChartJune07.authcheckdam.pdf>

We understand that there are concerns about HB 6664 that stem from having survivors of non-family or household member victimization in family court. We appreciate these concerns and are open to addressing this issue elsewhere in statute. The goal of HB 6664 is not to overwhelm the already stretched family court system but to provide much-needed civil restraining orders to *all* survivors of sexual violence and stalking.

Thank you for your consideration of both HB 6641 and HB 6664. We would be happy to address any questions or concerns that the Committee might have about either of these proposals, and we respectfully request your support.

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⁵ Black, Basile, Breiding, Smith, Walters, Merrick, Chen, & Stevens. *The National Intimate Partner and Sexual Violence Survey*. Atlanta, GA: CDC, 2011.

⁶ Kimberly A. Lonsway and Joanne Archambault. “The ‘Justice Gap’ for Sexual Assault Cases: Future Directions for Research and Reform.” *Violence Against Women* 12(8) (2012): 150.

⁷ Baum, Catalano, Rand (Bureau of Justice Statistics) and Rose (National Institute of Justice). *Stalking Victimization in the United States*. Washington DC: DOJ, 2009.